

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

| | | |
|-------------------------------------|---|-------------------------|
| BARAKA HIGGINS, |) | Case No.: 2:14-cv-12226 |
| |) | |
| Plaintiff, |) | |
| v. |) | Hon. |
| |) | |
| MIDLAND CREDIT MANAGEMENT, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

COMPLAINT

NOW COMES Plaintiff, BARAKA HIGGINS (“Plaintiff”), through her attorneys, KROHN & MOSS, LTD., and hereby alleges the following against Defendant, MIDLAND CREDIT MANAGEMENT, INC. (“Defendant”):

INTRODUCTION

1. Count I of Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* (“FDCPA”).
2. Count II of Plaintiff’s Complaint is based on the Michigan Collection Practices Act, Mich. Comp. Law 445.901 *et seq.* (“MCPA”).
3. Count II of Plaintiff’s Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

JURISDICTION and VENUE

4. Jurisdiction of this court arises pursuant to 28 U.S.C. 1331 and 15 U.S.C. 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”

5. Defendant conducts business in the State of Michigan thereby establishing personal jurisdiction.

6. Venue is proper pursuant to 28 U.S.C. 1391(b)(2), “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred...”

PARTIES

7. Plaintiff is a natural person residing in Clinton Township, Macomb County, Michigan.

8. Plaintiff is obligated, or allegedly obligated, to pay a debt as “debt” is defined by 15 U.S.C. § 1692a(5) and Mich. Comp. Law 445.251(a)

9. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3) and Mich. Comp. Law 445.251(d)

10. Defendant is a business entity with an office located at 3111 Camino Del Rio North, Suite 1300, San Diego, California 92108.

11. Defendant is a debt collector / collection agency as that term is defined by 15 U.S.C. 1692a(6) and Mich. Comp. Law 445.251(b).

12. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

13. Prior to the filing of this Complaint, an account was placed with Defendant to collect monies from Plaintiff which were alleged to be owed and past due (“debt”).

14. Upon information and belief, the alleged debt arises from personal telephone services with T-Mobile.

15. In connection with its attempts to collect the alleged debt, Defendant places

telephone calls (“collection calls”) to Plaintiff on her cellular telephone at number (586) 222-88xx.

16. Defendant has been assigned multiple telephone numbers from its telephone provider(s) to make its collection calls including, but not limited to, 800-265-8825 and 877-411-5551.

17. All of Defendant’s collection calls to Plaintiff were placed using an automatic telephone dialing system or other equipment capable of storing and producing telephone numbers at random or sequential intervals.

18. In or around January, 2014, Plaintiff started receiving collection calls from Defendant on her cellular telephone.

19. Plaintiff never provided Defendant with her express authorization to call her cellular telephone.

20. Defendant called Plaintiff approximately four (4) to five (5) times per day in its attempts to collect the alleged debt.

21. On February 14, 2014, Plaintiff answered one of Defendant’s collection calls and asked Defendant to stop calling her and to make its collection attempts in writing.

22. Defendant ignored Plaintiff’s instructions and continued to make collection calls to Plaintiff’s cellular telephone.

23. Plaintiff instructed Defendant multiple times since February 14, 2014, to stop calling her cell phone, and Plaintiff feels harassed by Defendant’s constant collection calls

24. Defendant’s continued collection calls include, but are not limited to, the following:

- 1) 4/23/2014 4:02 PM from 800-265-8825
- 2) 4/30/2014 2:15 PM from 800-265-8825

- 3) 5/11/2014 2:05 PM from 800-265-8825
- 4) 5/1/14 from 877-411-5551
- 5) 5/4/14 from 877-411-5551
- 6) 5/5/14 from 877-411-5551
- 7) 5/6/14 from 877-411-5551
- 8) 5/7/14 from 800-265-8825
- 9) 5/7/14 from 877-411-5551
- 10) 5/8/14 from 877-411-5551
- 11) 5/10/14 from 877-411-5551
- 12) 5/11/14 from 877-411-5551
- 13) 5/12/14 from 877-411-5551
- 14) 5/13/14 from 877-411-5551

25. Defendant's collection calls to Plaintiff's cellular telephone are annoying, harassing and abusive.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

26. Defendant violated the FDCPA based on the following:

- a. Defendant violated § 1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt;
- b. Defendant violated § 1692d(5) of the FDCPA by causing Plaintiff's telephone to ring repeatedly and/or continuously with intent to annoy, abuse, or harass;

WHEREFORE, Plaintiff, BARAKA HIGGINS, respectfully requests judgment be entered against Defendant, MIDLAND CREDIT MANAGEMENT, INC., for the following:

27. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k,

28. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692k, and

29. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE MICHIGAN COLLECTION PRACTICES ACT

30. Plaintiff repeats and re-alleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

31. Defendant willfully violated the MCPA based on the following:

- a. Defendant violated § 445.252(n) of the MCPA by using a harassing, oppressive, or abusive method to collect a debt by causing Plaintiff's telephone to ring repeatedly and/or continuously.

WHEREFORE, Plaintiff, BARAKA HIGGINS, respectfully requests judgment be entered against Defendant, MIDLAND CREDIT MANAGEMENT, INC., for the following:

32. Statutory damages of \$150.00 pursuant to the Michigan Collection Practices Act, Mich. Comp. Law 445.257(2),

33. Costs and reasonable attorneys' fees pursuant to the Michigan Collection Practices Act, Mich. Comp. Law 445.257(2), and

34. Any other relief that this Honorable Court deems appropriate.

COUNT III
DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT

35. Defendant's actions alleged supra constitute numerous negligent violations of the TCPA, entitling Plaintiff to an award of \$500.00 in statutory damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B).

36. Defendant's actions alleged supra constitute numerous and multiple knowing and/or willful violates of the TCPA, entitling Plaintiff to an award of \$1500.00 in statutory

damages for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, BARAKA HIGGINS, respectfully requests judgment be entered against Defendant, MIDLAND CREDIT MANAGEMENT, INC., for the following

37. Statutory damages of \$500.00 for each and every negligent violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(B);

38. Statutory damages of \$1500.00 for each and every knowing and/or willful violation of the TCPA pursuant to 47 U.S.C. § (b)(3)(b) and 47 U.S.C. § (b)(3)(C);

39. All court costs, witness fees and other fees incurred;

40. Any other relief that this Honorable Court deems appropriate.

Dated: June 5, 2014

KROHN & MOSS, LTD.

By: /s/Adam T. Hill

Adam T. Hill

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